



# Changing the Paradigm From Claimant to Valued Employee

Margaret Spence, President/CEO  
Douglas Claims and Risk Consultants, Inc.



# Changing the Paradigm From Workers Comp Claimant to Valued Employee

Tennessee Workers Compensation  
Education Conference

Margaret Spence

# Workers' Comp RTW Programs

- ✓ Extinct....
- ✓ Irrelevant
- ✓ Gone...





Why Do We Do  
What We Do?



Our Why....

Injury Management  
Is  
Talent Management

# Our Job...

- ***Create a Tribe of People Who Believe in What We Do!***
- To Keep the **W** in Work
- Find ways to **Engage** Injured Employees in their Own Medicare Care and Outcome
- Create a “**Best in Class**” Medical Treatment Process that is focused on **Immediate Care and Measured Outcome**
- Get our organizations to understand they must prevent instead of manage
- Use Data to Enact Change - ***We must make the Business Case for Why We Are Important!***

# We are Return to Work Coordinators....

- We are here to facilitate the return of injured employees to work as soon as they are able to perform meaningful, **productive** work within their restrictions.
- The Key Words:
  - As soon as possible
  - Meaningful
  - Productive



***We See*** the Employees ***Ability*** to  
Continue Working – Really We Do!

We Do Not Limit the Employee by  
Focusing on *What They Can't Do* –  
Right?

***We Understand that Labels Matter...***

# We Do Not Exist in a Silo...

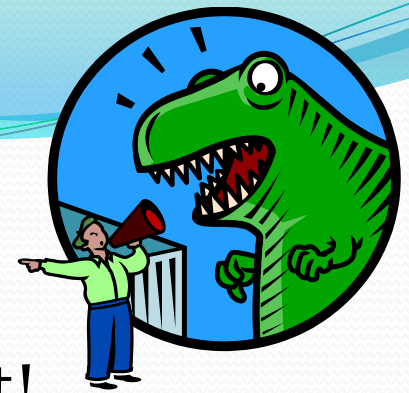


- We must be able to articulate the positive side of Return to Work Programs and
- We must be ready to deal with detractors who don't feel these Programs are viable!
- We must learn to speak the CEO's Language

# Eliminate the Focus on the Why

- Why do we need to bring the employee back to work:
  - He or She was a bad employee (Why)
  - He or She will only get injured again (Why)
  - He or She will sue us (Why)
  - We don't want that employee here anymore (Why)
  - We have little tolerance for injured employees (Why)
  - Its too much energy to establish and maintain a RTW Program. (Why)
  - These Why's existed before the Employee got injured:  
***Your HR issue is not my Workers Comp Issue!***

# Business Case...



- We Must Make a Business Case for the **What!**
  - What impact does getting injured employees back to work have on our bottom-line cost and our non-Workers Comp Exposure.
  - *What did we accept, condone, overlook that lead to the employee injury and lack of compliance?*
  - *Every Workers Comp Claim is a Symptom of Leadership Failures....Yes, Every Single One!*
  - We Must Articulate Our Value “Why should we keep you employed as the RTW Coordinator?” –
    - What do you add to our companies bottom-line? *Justify Your Existence or You will be Extinct!*



# 2,986,500

## Number of Recordable Injuries in 2011

Bureau of Labor and Statistics – 41 States

### Actual Injuries

# **5,000,000**

A Workplace Injury Occurs Every  
Six Seconds – 96,000 Each Week

# The Cost of Injuries..

- The National Safety Council Estimates that injuries cost US Employers – (National)....
  - \$176.9 Billion Annually
    - \$86.6 Billion in lost wages & productivity
    - \$43.2 Billion in medical cost
    - \$32 Billion in administrative expenses
  - **\$1300 – the Cost Per Worker**  
(Each Worker in the USA Must Produce \$1300 in Goods or Services to Offset National Cost of Injuries)

# The National Numbers...



908,300 – Cases with Day Away from Work –  
8 Average Days Away from Work!

340,870 – Strains, Sprains or Tears

182,270 – Back Injuries

225,550 – Falls

# Tennessee



Cases with the most “Days Away From Work” Occurred on a Tuesday ( Monday and Thursday close runner ups)



Age Group with the Most Days Away From Work:  
45 to 54 Year old – 26%



Injury with the most “Days Away From Work” Upper Extremity – 28.7%

# **60 Million Lost Work Days** (2010)

*Due to Injuries/Illness Directly Related to Workplace Accidents Includes 50 Million Days from Past Years of Off Work*

***Have we learned anything from our Success or our Failures?***

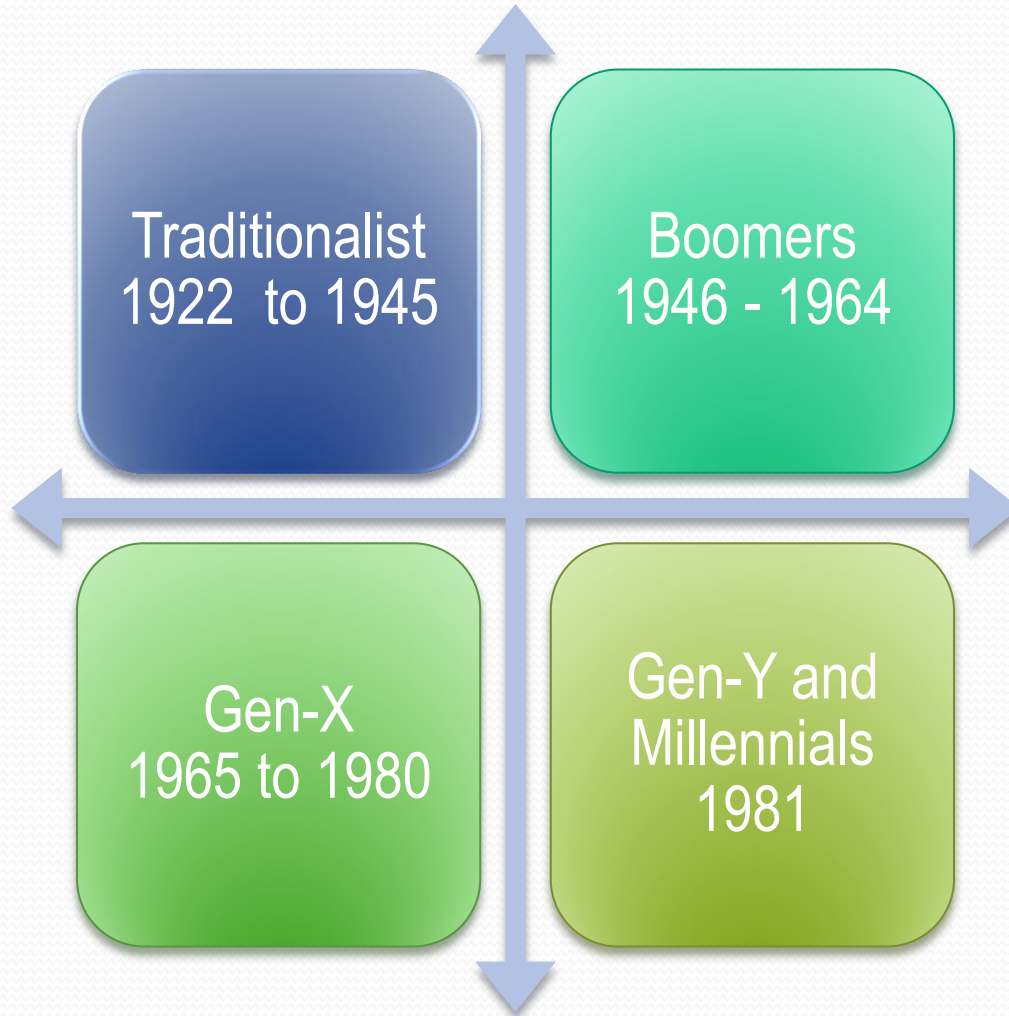
*National Safety Council – Accident Facts 2013*

# Absence and Presence Management

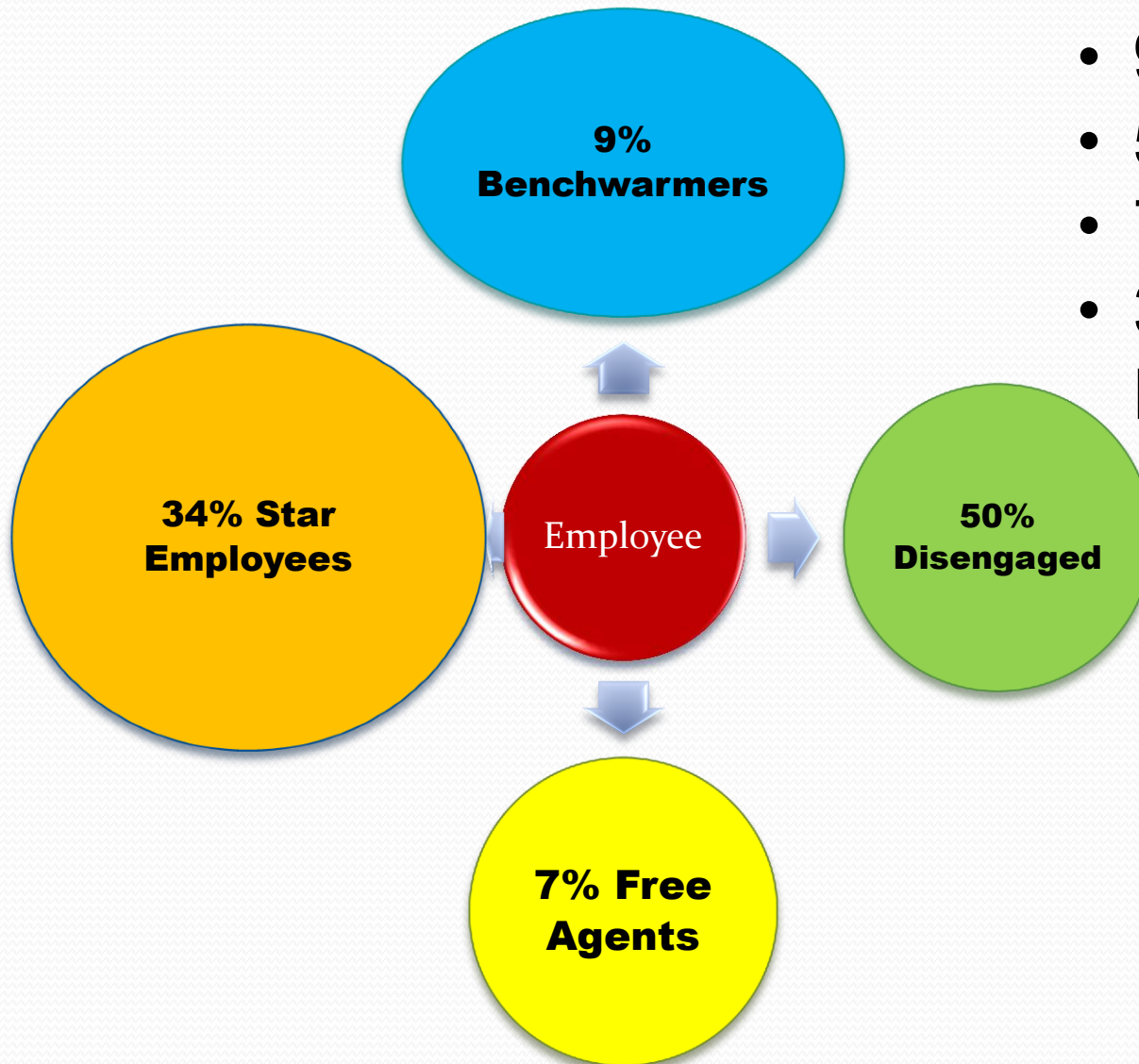
- 54% of HR Professionals Surveyed says they didn't know how much absenteeism cost their organization.
  - ***What is the Organizational Cost to Replace Employees?***
  - ***Can you quantify the cost right now?***
- 50% of all hourly employees leave their job within 120 days of hire.
  - ***These employees are your potential claimants***
- 75% of Employee do not feel Valued by their Employer
  - ***These Employees are your next nightmare!***

***All of this occurs before the “Workers Comp Claim”***

# Multi-Generational Workforce



# The Engaged – Disengaged



- 9% Benchwarmers
- 50% Disengaged
- 7% Free Agents
- 34% Star Employees

Now  
Add the  
Injury

# Pre-Injury - The Cycle of Engagement

Disengaged + Engaged

Frustrated/Disheartened

Inspired/Innovative



Ineffective + Effective

Resentful/Pessimistic

Conscientious/Productive



Disconnected

Angry/Resentful

Unaware/Self-absorbed

# The New Reality...

Injuries are  
the Gateway  
to  
Employment  
Litigation!



# Along Comes Johnny...



# The “New” Injured Worker....



- Injured “Johnny”
- 49 Years old
- Simple but Complex Back Injury
- Surgical Possibility
- Limited Education
- Long-term employee
- Dislikes his Supervisor
- Really wants to continue working....maybe!
- Someone in your organization is plotting ways to get rid of Johnny – and he knows it.

# The New Reality For Workers Comp & HR Professionals....

## Old Exposure

- Lost Wages
- Indemnity or Lost Wage Payments
- Medical Cost
- Ancillary Providers
- Litigation
- Settlements
- Increased Premiums

## New Reality

- ADA – ADAAA
- FMLA
- Age Discrimination
- Wage and Hour
- GINA
- Retaliatory Discharge
- Medicare
- Workers' Compensation and the associated cost.

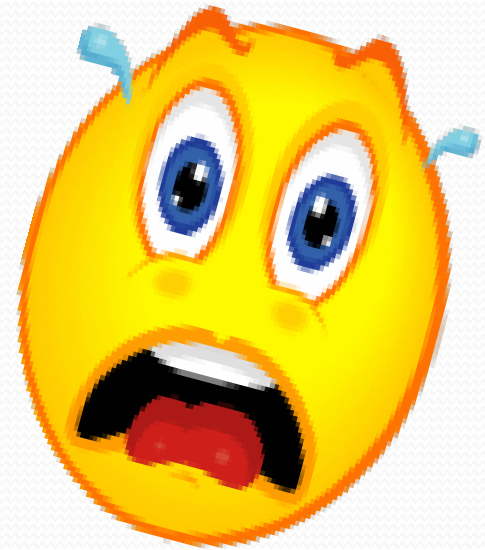
# The “New” Injured Worker....



- Simple but Complex Surgical Back
- Has Lumbar Surgery
- Off work 16 weeks
- Released to Return to Work Modified Duty
- Restriction: Limited Standing, Walking, Must sit, has difficulty managing daily chores, no lifting over 10lbs, no bending – ***Restrictions may be permanent***

# What are the ADA Qualifiers?

- Major life activities:
  - In general – major life activities include but not limited to – caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating and working



# Typical Workers Comp Restrictions:

- No lifting over 25lbs
- Limited sitting or standing
- No use of the right hand
- No walking
- No bending
- No pushing or pulling
- No driving
- No work
- No full time work....



# What are the ADA Qualifiers?

- Major life activities:
  - In general – major life activities include but not limited to – caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating and working



# The Double “O” Challenge

## Obesity

- Cost Employers \$73.1 billion each year
- 13 Times as many Lost Work Days
- Medical and Indemnity Cost: 7 – 11 times higher
- **30% Suffer from Two or More Co-morbidities**

## Opioids

- Rx Accounts for 19% of Claims Cost
- Working While “High”
- Using heavy narcotics to treat chronic pain conditions
- Epidemic

Can We Add Wellness as a Key Component of Injury Management?

# Litigation's Unintended Consequences



## John Brava/EEOC v. Sears Roebuck

- Injured Employee wanted to come back to work and the employer said No! Violation of the ADA directly related to Workers' Comp.
- Settlement - \$6.2 Million



## Boston Gourmet Pizza v. Childers

- Hiring an employee who is over-weight, then he has an accident. He gains more weight and the end result...
- Payment for Gastric By-pass Surgery



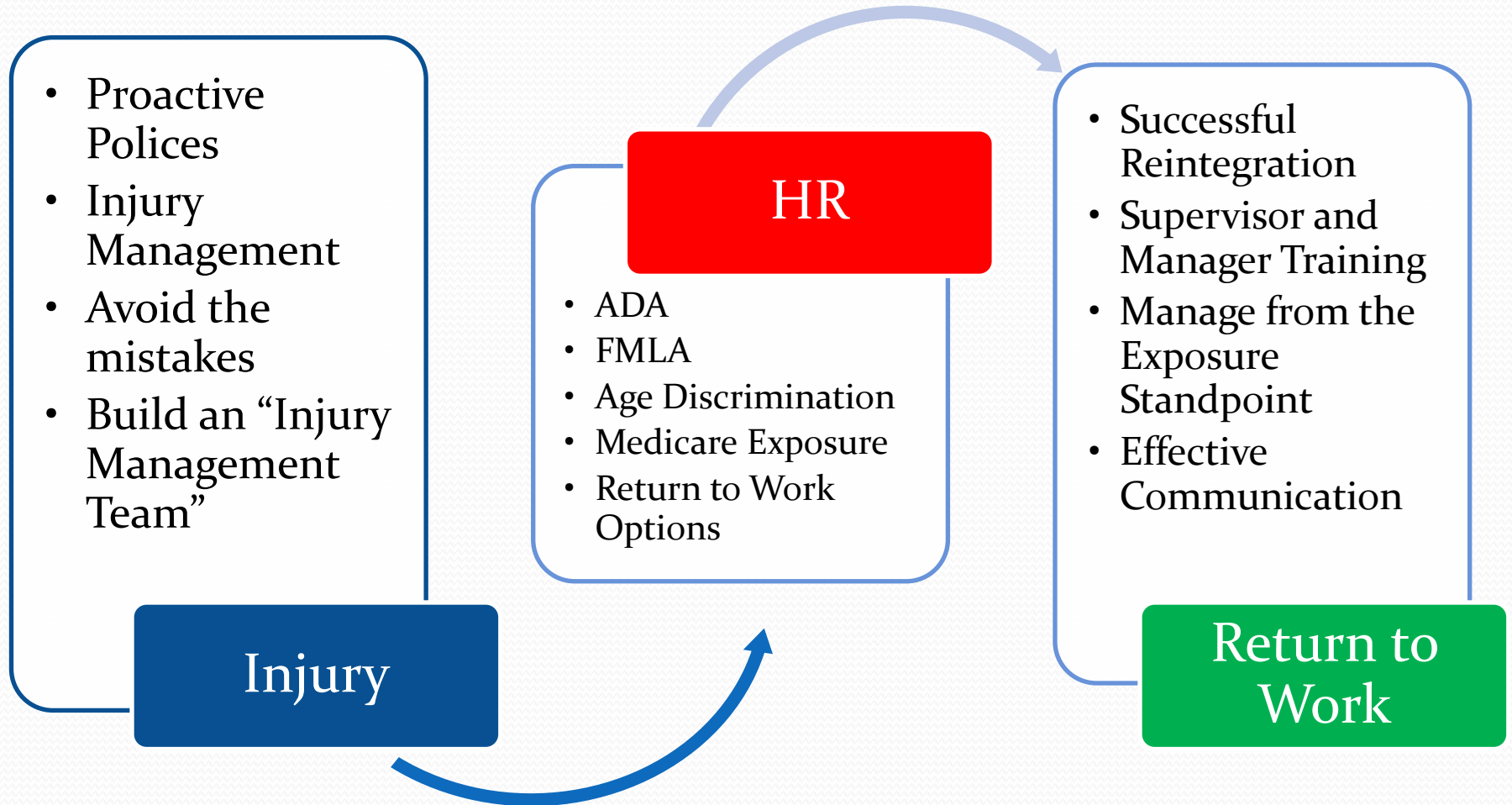
## Indegard v. Georgia Pacific Corporation

- Insurance Carrier provided the Functional Capacity Evaluation to the employer and they used it to "Terminate the Employee"
- Appeals Court ruling - Violation of the ADA – Allowed Employee to file suit against the employer.

# New Cases...

- Fabricut to pay \$50,000 – Violation of GINA: Genetic Information Non-Discrimination Act
  - Post-offer medical examination asked about the employees family history and related that to testing for Carpal Tunnel Syndrome (CTS)
- Alternative Drug Testing as a Disability Accommodation for potential hire
- Failure to provide reasonable accommodation at the end of disability or leave - \$400,000 Award
- Sign up for Press Releases at – [www.EEOC.gov](http://www.EEOC.gov)

# Integrated Disability Management Team



# Create a Business Model

- That articulates the Financial, Legal and Procedural Benefit we provide to our organization.
- What will your program achieve? What will success look like? and What will you accomplish?
  - Vision
  - Mission
  - Goal
  - Process
  - Results
  - Affect/Effect on Bottom-line cost



# Vision & Mission

Your Workers Comp & Return to Work Programs  
Must Be Run Like a Business Unit that is a Profit Center  
for Your Organization

- What is your **Vision**?
- What is your **Mission**?
- What will **Success Look Like in Your Organization**?
- How will you **Measure Success**?
- You must ***Quantify Success***

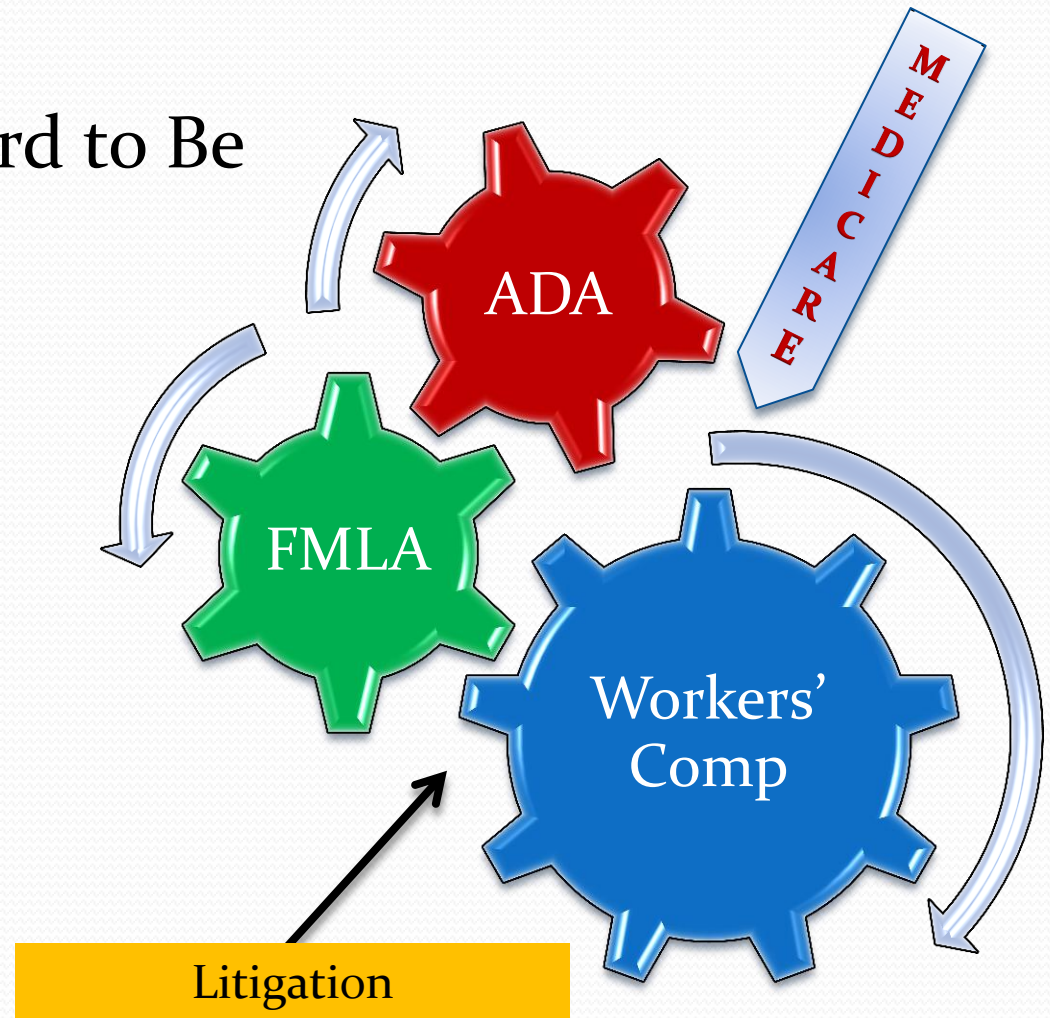
# Tribe of Believers Your Injury Management Team

- **Insurance Broker/Agent/Regulators/Legislators**
  - Advocating Cost, Pricing and Claims Management Best Practices
- **Adjuster**
  - Understanding the Dynamics of the Employer's Work Environment
- **Physicians**
  - Treating Injured Employees for Best Outcome Immediately
- **Legal System**
  - Like it or not they are a part of the Tribe
- **Supervisors**
  - Hold the Keys to Success – Get them to understand the exposure
- **Injured Worker**
  - Clearly Defined “Expectations” We want you to\_\_\_\_\_!
- **Employer**
  - Demand More – Expect More – Lead – Check Your Ego at the Door

**Our TEAM is a Marriage Without Any Possibility of Divorce**

# Our Team Cannot Afford to Be Dysfunctional

- Risk Managers
- Supervisors
- Adjusters
- Safety
- **Physicians**
- Insurance Carriers
- Legislators
- Ancillary Providers



**“We have to find ways to ask tough questions about how we manage injuries.**

**We MUST Create solutions that address our internal shortcomings as well as the intervening factors changing the dynamics of Injury Management”**

# Tribal SWOT – Analysis



# Surveying the Landscape...



Collective Bargaining  
Agreements  
Supervisors

Insurance Carrier  
Adjusters  
Case Managers



Physicians  
Laws  
Management Support

- Essential to Building Your Team



# Training Your Management Team...

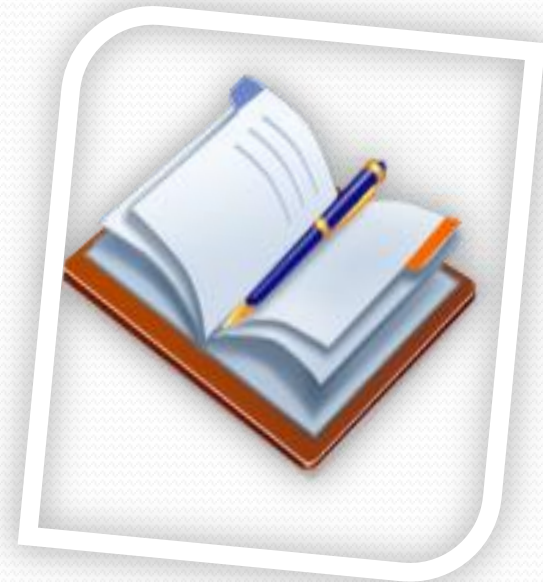


- It is critical that you train your Managers and Supervisors so they understand their role in the process.
  - Supervisors and Managers may “will” not cooperative, unless you make them cooperate.
  - **If You Want Injured Workers to Cooperate Get Your Supervisors in Line First!**

# Essential Ingredients

Six Key Components of a Effective Workers Comp Program – Written Policies:

1. Injury Notification Policy
2. Medical Treatment Policy
3. Post Accident Procedures
4. Return to Work Policy
5. Notification Procedures
6. Compliance



# Best Practices...

- Job Descriptions
- Job Demand Evaluation
  - Identifying the:
    - Essential
    - Marginal Functions
- **Clearly defined policies that address Return to Work - Globally.**
- Immediate Evaluation of ADA, FMLA Exposure.
- Do not terminate an employee who has ADA or FMLA exposure before consulting your *Employment Attorney*.

# Job Accommodation Network...

ADA LIBRARY

PUBLICATIONS AND RESOURCES

SEARCH ACCOMMODATIONS DATABASE

A-Z OF DISABILITIES AND ACCOMMODATIONS

NEWS

# JAN

Job Accommodation Network

Search

Hot Topics

JAN en Español


Print this Page

A A A Text Size

How to Use this Site

## ASK JAN

If you have a question about workplace accommodations or the Americans with Disabilities Act (ADA) and related legislation, we can help.



1 2 3 4 5 6 7 8

MEET TENIKA

### Connect with JAN

(800)526-7234 (Voice) (877)781-9403 (TTY)

- Email JAN
- Subscribe to Newsletters
- Share Through Your Social Networks
- Newsletter
- Live Help
- Link to Us
- RSS Feed
- Webcasts

### FOR EMPLOYERS

- Private Employers
- Federal Employers
- State & Local Government

### FOR INDIVIDUALS

- Employees
- Job Seekers
- Entrepreneurs

### FOR OTHERS

- Rehabilitation & Medical Professionals
- Union Representatives
- Attorneys & Legal Representatives

www.AskJAN.org

**Most Accommodations Cost Less than \$500**

# Advocate – Enforce - Liaison + **Customer Service**

- **Primary Duty**
  - Advocate
- **Secondary Duty**
  - Enforcer
- **Tertiary Duty**
  - Liaison
  - Customer Service

- What would your program look like if you focused on being a Customer Service Advocate for the Injured Employee?
- **How would we impact the outcome of the claim if we added Wellness as a component of our Talent Retention Strategy?**
- People hire attorneys because they think someone is out to take something away that they are entitled to... **or**
- They saw your prior pattern and they anticipated the outcome and that outcome requires legal representation.

# Employer B

## Lost Work Days Cervical Spine Injuries

Fiscal Year	Number of Claims	Lost Work Days	Lost Days/Claim
2005-6	71	1,875	26.4
2006-7	50	1,002	20.0
2007-8	58	348	6.0
2008-9	56	497	8.9
2009 to 4/29/10	41	304	7.4

They added a Proactive Return to Work Program

# Employer B

## Lost Work Days Lower Back Injuries

Fiscal Year	Number of Claims	Lost Work Days	Lost Days/Claim
2005-6	565	12,807	22.7
2006-7	517	5,461	10.6
2007-8	438	5,692	13.0
2008-9	412	6,270	15.2
2009 to 4/29/10	342	2,379	7.0

Added Early Diagnosis and Treatment – to the Return to Work Program

# Employer B

## Lost Work Days Shoulder Injuries

Fiscal Year	Number of Claims	Lost Work Days	Lost Days/Claim
2005-6	183	7,185	39.3
2006-7	190	4,885	25.7
2007-8	208	4,285	20.6
2008-9	180	3,704	20.6
2009 to 4/29/10	139	1,403	10.1

Added Employee Wellness – Risk Management Decided to Treat Injured Employees as their Customer! They added Customer Service to the Return to Work Program coupled with Early Intervention and Diagnosis!

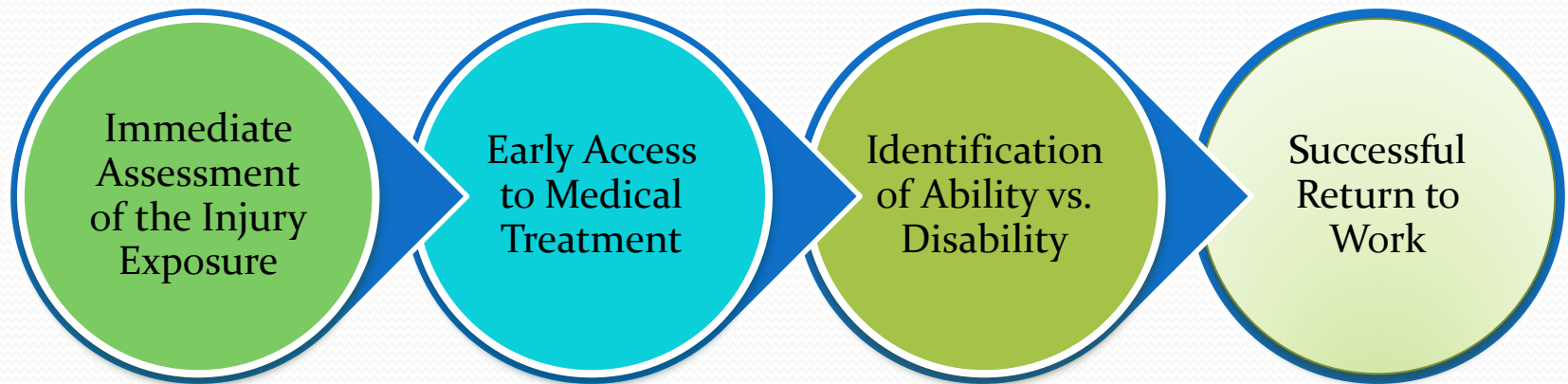
# Change the Lingo...

- **Re-Onboarding** – How do we bring the employee back to work?
- **Talent Management** – How do we determine what they can do? Or How do we create pathways to work? How do we extract the talents the employee has if they can't do their regular job?
- **Retention** – How do we keep the employee here after the injury?
- **Value** – Do we still value the employee after they have an injury? How do we *Eliminate* the “De-Valued Employee Syndrome”

# Effective Leaders with Solid Programs...

- Understand the *Core Competency* Required to work in your organization and remain “Injury Free”
- Built programs with one goal – **Getting Injured Employees back to work** after an injury!
- Have specific policies that address how your Workers Compensation Program is managed Internally and Externally.
- Have a Customer Focus Day 1 - **Proactive Return to Work Programs** as a Key Component of their Success....
- A willingness to “Rinse and Repeat – throw out what doesn’t work and implement what works.

# Link Outcome with Engagement....

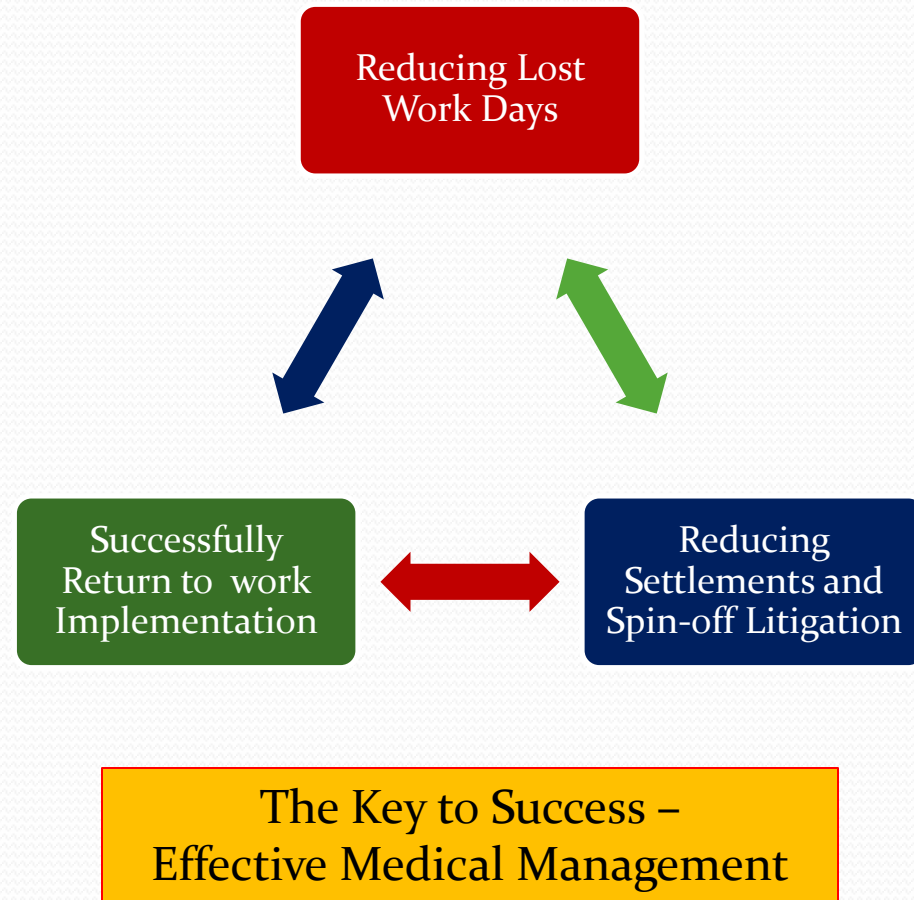


## My Utopia:

- Assess the Injury and Provide Immediate Specialty Care
- Early Diagnosis – Defined Treatment Planning
- Employee takes their Job Description to EVERY Appointment and Says: When can I go back to my regular job?
- Doctors Cooperate or we don't send them any more patients
- Lawyers Stop Manipulating the System
- **We Stop trying to Legislate Leadership**

# Selling Success....

- Success is not defined by writing new policies
- Success is defined by getting everyone on the same team!
- Why can't we use "Successful Injury Management" to sell the process to Stakeholders?



# Simplistic Request...

- Participating Isn't Leading...
- What have you learned from your Failures? and Successes?
- Leadership is scarce because few people are willing to go through the discomfort to lead...
- It is uncomfortable to challenge the status quo...
- It's uncomfortable to resist the urge to discard the injured employee...
- Great Leaders Create Movements by empowering the tribe to communicate. They establish the foundation for people to connect as opposed to commanding people to follow them.
- **Go back to your organization and lead...they are waiting for your innovative ideas...**

**Change the Paradigm From Workers Comp Claimant to Valued Employee...**

## We – Can...

- Educate Stakeholders on the overarching exposure!
- Leverage the current economic climate to get stakeholders to change!
- Communicate in Real-time!
- Build a Dynamic Team that Manages the Injury **Effectively on Day 1...**

## Johnny – Can...

- Return to Work Successfully



# Contact Information...



- Blog – **[www.WorkersCompGazette.com](http://www.WorkersCompGazette.com)**
  - LinkedIn – Margaret Spence
  - Twitter – **@MargaretSpence**
    - **@WorkCompGazette**
- Training...**[www.WorkCompSeminars.com](http://www.WorkCompSeminars.com)**
  - Phone: 561-795-3036
- Email: **[Margaret@MargaretSpence.com](mailto:Margaret@MargaretSpence.com)**

# About Margaret Spence...



Margaret Spence is a Board Certified Workers' Compensation consultant, speaker and trainer who ranks among the experts in the field of injury management and return to work implementation.

For more than two decades, she has managed workers' compensation claims for Fortune 500 Corporations, Public Entities and small businesses. She is an expert at showing companies how to slash their workers' compensation cost by implementing strategies that drastically reduce injury rates, increase productivity and energize employees to work safely.

Margaret is the author of –

*From Workers' Comp Claimant to Valued Employee - Employer's Guide to Implementing a Proactive Return to Work Program.*

Visit my website: **[www.MargaretSpence.com](http://www.MargaretSpence.com)**

**Thank You For Inviting Me  
to Tennessee**